

TOWN OF SHELBURNE
Planning Board
Minutes of Public Hearing
Draft Section 17. Premises Use Wind Energy Facility Bylaw
Wednesday, February 12, 2014

A duly posted public hearing regarding Draft Section 17. Premises Use Wind Energy Facility Bylaw was held by the Shelburne Planning Board at 7:00 pm on Wednesday, February 12, 2014 at the Buckland Shelburne Elementary School, 75 Mechanic St., Shelburne Falls.

Present: Matt Marchese, Chair
Beth Simmonds, Vice Chair
Doug Finn, Vice Chair
John Wheeler
Cam Stevenson

Administrative Assistant: Liz Kidder

Absent:

Press:

Audience: David Schochet, Thomas Heinig, Kevin Parsons, John Gould, Mark Wightman, Mike Skalski, Mike Parry, Rob Riggan, Michael Hoberman, Cynthia Boettner

Matt Marchese opened the public hearing which was posted in accordance with the requirements of the Massachusetts Open Meeting Law. The purpose of the public hearing was to accept public comment on a proposed Draft Section 17. Premises Use Wind Energy Facility Bylaw. This draft bylaw is a result of two years of effort by the Planning Board, their consultant Tighe & Bond, and the Wind Advisory Committee. Matt thanked the Advisory Committee for their extensive research, the many hours of volunteer effort and for the report they produced for use by the Planning Board.

Matt asked if anyone was recording the hearing and there were no responses.

Matt and the Board introduced themselves. Matt stated that he was going to first ask for comments from any Town Boards or officials in attendance, then move to residents of Shelburne and then anyone else present. Each speaker will be allowed 3 minutes for their initial comments. If a speaker has additional comments, they will be recognized after everyone has had one chance to speak. He asked that each speaker give their name and address when they stand. He noted that there were microphones available if necessary.

Kevin Parsons, Shelburne, chair of the Wind Advisory Committee (WAC). Kevin noted the WAC had put together an extensive report researching premises use wind turbines that is available for review on the town website. He commended the Board for putting this draft bylaw together and said it addressed 99% of all the key issues. He did have a couple of thoughts he'd like the Board to consider.

Kevin suggested the Board consider adding an expanded "purpose" paragraph at the beginning of the bylaw. Tom Webler, a member of the WAC, had drafted some language which Kevin would submit in writing if the Board would like to see it. He thought this preamble or purpose language would set the stage and explain the spirit of the bylaw. The bylaw should be able to be modified in the future as wind technology advances.

Matt announced that he would hold the public hearing record open until close of business on Friday, February 14th, in order to receive all written suggestions, such as the proposed language Kevin was recommending. He noted that specific language can be submitted to the Town Hall or to Planning@townofshelburne.com by close of business on Friday.

Kevin made several related suggestions:

- 17.1 Purpose - in the last sentence, which states "Any proposed non-conforming premises use wind energy systems will be addressed through a Special Permit process under the review of the Special Permit Granting Authority", strike the term "non-conforming"

Approved: _____ Date: _____ 1

- 17.4.3 Special Permit, 17.10.3. Special Permit, and 17.12 Waiver of Compliance, all reference “waivers may be granted from the requirement to obtain a Special Permit pursuant to.... or from any of the Special Permit Application Requirements....”.

Kevin recommended that all proposed premises use wind energy systems should be required to proceed through the special permit process with a public hearing. The possibility of waivers should be removed.

Matt noted that the Board limited waivers to application elements. The Board feels that the SPGA should have the right to waive the requirement for specific information if they do not feel they need that information in order to prepare their conditions for or issue the special permit. The Board does not want to see an applicant asked to spend any more money than necessary on the application package.

John Wheeler noted this was discussed at the Open Space Committee on Monday night. The consensus of the Open Space meeting was that if the circumstances were appropriate for a less expensive application packet that was reasonable. However, they want to make sure that the requirement for a special permit with public hearing for every wind turbine can't be waived.

David Schochet of the Open Space Committee (OSC) noted that they had submitted their comments to the Board on Monday evening. David noted the OSC also felt there needed to be an expanded Section “17.1 Purpose” and had included possible language in their comments. Matt noted that the Towns overall zoning bylaw has a purpose section through which everything is filtered. David said that an expanded “purpose” at the beginning of the new bylaw would be consistent with the goals of the new open space plan.

David also wondered what the definition of “premises” was – could an empty lot have a wind turbine? Can a turbine be on an adjoining lot? Or, does it have to be constructed on a lot with a building. David said they would also like to see all applications for wind energy systems go through the special permit process. Allowing premises use wind turbines is a new direction for people. Once the town has experience with them, then the Town can consider whether some should be allowed without special permit. In regards to compliance review, how do people know they are in compliance? The OSC had questions about the 10 kw and 30 kw limits – is that an absolute limit? They recommend putting in a percentage of how much of the power has to be used on site. David suggested that all applications, such as in 17.4.2, 17.10.2.1 and 17.10.3.1, should include the results of a balloon test, similar to the requirement in the Town's telecommunications bylaw. Matt noted that the board had received an email from the open space committee that contained 14 items and these will be include in the public hearing records.

David asked the purpose of a compliance review. Matt reviewed the role of compliance approval in the bylaw. Section 17.10.2.1 identifies what has to be submitted by the applicant to the SPGA. If the proposal meets certain standards, they receive compliance approval from the ZBA and can get a building permit. David asked where in the list of submission elements in 17.10.2.1, is the reports that will give the SPGA the information they need to evaluate whether the proposal meets the standards set in 17.5., 17.6, or 17.7.

Matt went through an example of the compliance approval process. Matt also noted that on advice of Counsel, there needs to be a process in place so that some wind turbines would be allowed by right when the project meets certain requirements; it's not appropriate to do everything by special permit.

Mike Parry, a member of the ZBA, stated that he believes Compliance Approval could raise legal questions and leave the Town open to lawsuit. For example, if the ZBA grants compliance approval for a turbine without requiring a noise study, and then there is a complaint after it is installed. Can the applicant say the ZBA said they were in compliance and therefore ignore the complaint or sue the Town? Matt explained what the Board saw as the process. The ZBA would be able to ask for noise studies at the compliance approval stage if they felt it was necessary for them to have the study results prior to making a determination. The Board feels that the draft bylaw clearly states that if an installed turbine does not meet the standards, that turbine must cease operation.

Mike Parry referred to Section 17.5.3 Noise. Mike noted that the members of the WAC have been in communication with some of the researchers whose work is referenced in the bylaw. He has sent a copy of this draft bylaw to them to see if they have any comments or advice for the Town. He is concerned about using 33 dBA as the maximum ambient air noise level. If the ambient noise level in an area is normally 15 dBA, allowing an increase up to 33dBA would be a

lot more noticeable than if a turbine is installed in an area with a normal ambient noise level of 28dBa; an 18 dBa increase is very different from a 5 dBa increase. Mike further suggested a clarification in Section 17.5.5 as to what happens if they can't get an installed turbine into compliance. Beth noted she had also been contacting specialists on ambient noise levels and that the board is working on this language.

Matt asked if there were any residents of Shelburne or other towns who would like to speak or be heard. No one in the audience responded.

Kevin Parsons asked to speak again and was recognized by Matt. Kevin submitted a copy of a "Residential Wind Turbine Bylaw" from the Town of Dartmouth that had both an extensive purpose section and requires all residential wind turbine proposals to go through the special permit process. He suggested we look at their process since they do it all by special permit without a two tier process. Matt said we were following advice from the Board's consultant and Town Counsel that some level of turbines need to be allowed by right or with basic standards. Kevin said he feels there needs to be a definite impact assessment for every wind turbine. It should be required of every applicant to demonstrate their compliance and that all neighbors need to be notified and allowed to have input as they do through a special permit. Matt pointed out the enforcement section of the draft which gives the Board of Health the authority to investigate whenever there are complaints by neighbors. Kevin said he didn't think it was fair to put the onus on neighbors to make the complaint.

Matt noted that he has been talking to Town Counsel and hopes to have a conversation with the Attorney General's office as well to get input on this bylaw. He is seeking clarification on whether or not a town can require a special permit for all wind turbines. Matt is also concerned whether the draft bylaw as written will create a situation where the cost to get a permit for a wind turbine will be prohibitive; in effect, the bylaw would be a ban on any wind turbines. He is concerned that as the draft bylaw is written, it may not be approved by the Attorney General's office even if passed at Town Meeting, leaving the Town without any regulations or standards relative to premises use wind energy facilities. Matt said there has to be a level of reasonableness; we are not talk about big wind or industrial wind in this bylaw.

Mike Parry noted that wind is a very unique technology and therefore difficult to be guided by overall bylaws. Matt went on the record stating that residential wind has been around a long time. This bylaw is not about industrial wind turbines. The implementation of this bylaw will require a very skilled eye by the ZBA. If what people really want is to ban wind in Shelburne than they should say so. Do not ask the planning board to spend several years working on a bylaw that makes it so cost prohibitive that no wind turbine can be built, essentially a back door approach to a ban.

Mike Parry noted there is no indication in the bylaw of when or how the ambient sound is to be measured. Matt said that it requires a professional engineer to conduct a study and that they have to follow professional standards.

Beth said the professional she talked to noted that historically there just hasn't been a problem with noise from small wind. Therefore, her contacts suggested it would be an unnecessary expense in most situations to require a noise study prior to installation. It is made clear to applicants in the bylaw that it is really a "buyer beware" situation. Even if the applicant is led to believe by the company from which they purchase the turbine that noise will not be a problem, if noise does become a problem, the turbine owner will have to comply with the Town standards or the turbine will have to cease operation.

David Schochet said the OSC had wondered if there is a public hearing before waivers are granted by the ZBA to allow input from neighbors. Doug Finn noted that a major purpose of this bylaw is to provide guidelines for the ZBA to follow as they respond to applications. If the bylaw didn't give them guidance, the ZBA could make up their own criteria.

John Gould, Buckland, asked Matt if he already feels that the current draft is more onerous than Matt would like to see. Matt aid yes, he feels that even in its current state, the draft bylaw will in effect rule out that a premises-use wind turbine will ever be built in Shelburne. It is concerning to him; the board is trying to find a balance. John Gould said it is the perpetual problem for planning boards, how to regulate in a balanced fashion representing the best interests of the town. John Gould asked if Matt had any problems with banning Industrial Wind. Matt replied no, since it was a straight forward ban.

Approved: _____ Date: _____ 3

Matt reiterated that if anyone has anything else to submit in writing to do so by end of day on Friday.

Matt again thanked the Wind Advisory Committee for all their hard work – they did an outstanding job researching this issue.

A motion to adjourn the public hearing was made by Doug and seconded by John Wheeler.
Vote: 5 in favor, 0 opposed, 0 abstentions.

The hearing was adjourned at 8:40 pm.

Respectfully submitted by,

Liz Kidder
Administrative Assistant

List of documents:

Town of Shelburne, MA., Draft Section 17 Premises Use Wind Energy System Bylaw
Town of Shelburne, Open Space Committee, comments dated February 10, 2014
Town of Shelburne, Conservation Commission, email Tuesday, February 11, 2014

Documents/statements submitted during the public hearing:

Town of Dartmouth, MA., Section 33 – Residential Wind Turbine By-Law

Documents/statements submitted for the public hearing record by end of business, Friday, February 14, 2014:
None received

Documents/statements submitted after the end of business, Friday, February 14, 2014:

“My suggestions” email submitted by Kevin Parsons [kevinparsons@mindspring.com] received Friday, February 14, 2014 at 5:49pm.

“Wind Bylaw Questions” email submitted by John Taylor, ZBA, dated Saturday, February 15, 2014 at 12:30 pm.

Approved: _____ Date: _____ 4